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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**  
11

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 vs.  
15

16 NEWPOINT FINANCIAL SERVICES,  
INC., JOHN FARAHI; GISSOU  
17 RASTEGAR FARAHI; and ELAHEH  
AMOUEI,

18 Defendants.  
19

and  
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TRIPLE "J" PLUS, LLC  
21

Relief Defendant.  
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CASE NO. CV 10-0124 DDP (JEMx)

**DEFENDANT JOHN FARAHI'S  
MEMORANDUM IN SUPPORT OF  
MOTION TO MODIFY MARCH 17,  
2010 PRELIMINARY INJUNCTION  
ORDER AND ORDERS TO  
RELEASE FUNDS TO PAY LIVING  
EXPENSES AND ATTORNEY'S  
FEES**

Date: April 19, 2010

Time: 10 a.m.

Judge: Hon. Dean D. Pregerson

**I. INTRODUCTION**

On January 8, 2010, the Court entered a Temporary Restraining Order (“TRO”) on the application of the Securities and Exchange Commission (the “SEC”) that among other things, froze all of the assets of defendant John Farahi and appointed a temporary receiver over his business and primary source of income. Since the entry of the TRO, Farahi has stipulated to the appointment of a permanent receiver, entered into a bifurcated settlement with the SEC, and cooperated with the receiver by answering questions and locating requested documents. On March 17, 2010, the Court entered a Preliminary Injunction Order and Orders freezing Farahi’s assets.

Farahi has requested that the SEC and the receiver agree to release personal assets so that he can pay living expenses for himself and attorney’s fees during the pendency of these proceedings. The SEC has refused Farahi’s requests to stipulate to a reasonable amount of living expenses. Accordingly, Farahi applies to the Court to modify the March 17, 2010 Order to release funds for his monthly living expenses in the amount of \$5,500, his expenses of \$3,400 to preserve the house, and his attorney’s fees.

**II. THE COURT SHOULD RELEASE FUNDS FOR LIVING EXPENSES**

The TRO itself provides for “an allowance for necessary and reasonable living expenses to be granted only upon good cause shown by application to the Court with notice to and an opportunity for the Commission to be heard.” (TRO at 4:17-20.) This Court has the authority to modify the asset freeze so that Farahi can reasonably support himself during the pendency of these proceedings. *See SEC v. Private Equity Management Group, Inc.*, 2009 WL 2058247, at \*3 (C.D. Cal. Jul. 9, 2009); *SEC v. McMillan*, 2006 U.S. Dist. LEXIS 89150, at \*1 (D. Ariz. Dec. 7, 2006); *SEC v. Dowdell*, 175 F. Supp. 2d 850, 854-55 (W.D. Va. 2001); *SEC v. Coates*, 1994 WL 455558, at \*2 (S.D.N.Y. Aug. 23, 1994). *SEC v. Scott, Gorman Municipals, Inc.*, 407 F. Supp. 1383, 1388 (S.D.N.Y. 1975) (order freezing assets

1 “except for ordinary living expenses”).

2 The Court has discretion to release funds for living expenses and to determine  
3 the amount. In exercising its discretion, the Court may consider whether Farahi has  
4 personal assets that are separate from the investors’ assets, whether he has any  
5 income, and whether his requested living expenses are reasonable under the  
6 circumstances. *Private Equity Management Group*, 2009 WL 2058247, at \*3, citing  
7 *SEC v. Duclaud Gonzalez de Castilla*, 170 F. Supp. 2d 427, 430 (S.D.N.Y. 2001).  
8 Those cases where courts have denied requests for living expenses have involved  
9 defendants who could not show untainted assets, had other sources of income, had  
10 requested funds for luxuries, or had not supported their requests for living expenses  
11 with competent evidence. *Private Equity Management Group*, 2009 WL 2058247,  
12 at \*4 (request for \$27,000 per month denied as unreasonably high, unsubstantiated,  
13 and no source of untainted funds); *Coates*, 1994 WL 455558, at \*2 (request denied  
14 where receiver already paying \$12,000 per month to defendant and his family).

15 Farahi’s application should be granted here because: (1) he has personal  
16 assets that are separate from the assets of NewPoint and the NewPoint investors;  
17 (2) he has had no source of income since the TRO shut down his business; and (3)  
18 his request is reasonable and supported by competent evidence.

19 **A. Farahi Has Untainted Personal Assets**

20 Farahi seeks to release personal assets that are not tainted by the allegations  
21 concerning NewPoint. These are assets that Farahi purchased with his own personal  
22 funds or monies borrowed on his own personal line of credit.

23 Untainted assets include his 10% interest in the Sunset Carson City  
24 Apartments limited partnership, which owns an apartment building in Carson City,  
25 Nevada. Farahi invested in this limited partnership in 1978 or 1979, more than 20  
26 years before anyone invested in NewPoint and more than 30 years before the entry  
27 of the TRO, and he has held this interest continuously to the present day. (Farahi  
28 Decl. ¶ 2.) Farahi is a limited partner in this entity and has no managerial role.

1 (*Id.*) Farahi estimates he could sell his limited partnership interest for between  
2 \$25,000 and \$30,000 if the Court permits him to do so. (*Id.*) The Court should  
3 modify the asset freeze to permit Farahi to sell his limited partnership interest in  
4 Sunset Carson City Apartments and draw against the sale proceeds for his  
5 reasonable living expenses.

6 Farahi also has untainted funds from a \$1.688 million personal federal income  
7 tax refund he received from the Internal Revenue Service in two installments on  
8 November 5, 2009 and November 12, 2009. (*Id.* ¶ 3.) This federal tax refund is the  
9 property of John and Gissou Farahi individually. The refund came from the federal  
10 treasury, not from NewPoint or any investors. Farahi deposited the federal tax  
11 refund into his Farahi Family Trust account at Sun West Bank and into his personal  
12 account at Wells Fargo Bank. On November 20, 2009, Farahi transferred \$100,000  
13 from his Sun West Bank account to another account at Sun West Bank in the name  
14 of Winners Realty Inc., a corporation that he owns and controls. (*Id.* ¶ 5.)  
15 Approximately \$86,000 of this \$100,000 deposit was still in that account when it  
16 was frozen by the TRO. (*Id.*) The Court should modify the TRO to permit Farahi to  
17 draw against the funds in the Winners Realty Sun West bank account for his  
18 reasonable living expenses.

19 Farahi owns a Ferrari 612 that he would sell to provide funds for the receiver  
20 and for his living expenses. Farahi purchased the car with his own money; no  
21 NewPoint or investors funds were used to purchase the car. (*Id.* ¶ 6.) Farahi  
22 requests that the Court modify the asset freeze so that he can sell the car, give sixty  
23 percent of the proceeds to the receiver, and deposit the remaining forty percent to  
24 draw against for living expenses as approved by the Court.

25 Farahi also owns a boat indirectly through SeaRunner LLC, a limited liability  
26 company that he owns and controls. (*Id.* ¶ 7.) He purchased the boat with his own  
27 money and with funds borrowed on his personal line of credit, and subsequently  
28 refinanced the boat with a secured loan. (*Id.*) Farahi is in the process of conveying

1 his interest in SeaRunner to the receiver so that the receiver may sell the boat.  
2 Farahi requests the Court to enter an order directing the receiver to pay his living  
3 expenses (not to exceed forty percent of any net proceeds received from the sale of  
4 the boat) if and to the extent there are no other unfrozen funds available for him to  
5 draw living expenses.

6 **B. Farahi Has Earned No Income Since the TRO.**

7 Farahi's only sources of income were the investment businesses that were  
8 frozen by the TRO. (*Id.* ¶ 8.) Since the TRO, neither John Farahi nor Gissou Farahi  
9 has had a job or received any other income. (*Id.*) During this period, Farahi has  
10 been occupied with defending this action and cooperating with the receiver without  
11 compensation. The absence of any source of income to pay living expenses strongly  
12 favors the release of untainted funds for support. *Coates*, 1994 WL 455558, at \*2  
13 (request denied where receiver paid defendant monthly salary).

14 **C. Farahi's Requests for Living Expenses Are Reasonable and**  
15 **Supported by Competent Evidence.**

16 Farahi requests that the Court approve the release of \$5,500 per month for  
17 living expenses to support him and his wife. This amount includes: \$3,000 per  
18 month for health insurance premium for John and Gissou Farahi; \$900 per month  
19 for medication, co-pay and deductibles; \$1000 per month for groceries; \$500 per  
20 month for automotive expenses (gas, maintenance, insurance); and \$100 per month  
21 for telephone and internet access. (Farahi Decl. ¶¶ 9-14.)

22 The requested expenses are reasonable and necessary. Almost \$4,000 per  
23 month is for medical expenses, including health insurance premiums, medication,  
24 co-pays and deductibles. These expenses are necessities, not luxuries. Farahi also  
25 need money for food and groceries: \$250 per week is a reasonable amount. Farahi  
26 will also require a car, and \$500 per month for gas, insurance and maintenance is a  
27 reasonable estimate for automotive expenses. These requested amounts are  
28 reasonable and will require that he and his family significantly cut back the

1 expenses of their former lifestyle. Farahi does not seek funds to pay for multiple  
2 residences, multiple cars, travel, entertainment or dining out.

3 In addition to his personal living expenses, Farahi also requests \$3,400 per  
4 month to maintain the value of his house. This includes \$1,600 for utilities (gas,  
5 electricity and water); \$1,200 for home insurance; \$400 for the gardener; and \$200  
6 per month for pool service. (Farahi Decl. ¶¶ 15-21.) Farahi's home will be sold,  
7 and we have advised the receiver that any net proceeds from the sale will go to the  
8 investors. Meanwhile, Farahi's creditors, including the receiver, have an interest in  
9 Farahi maintaining his house for as long as he continues to reside there. This  
10 including paying for insurance, watering, landscaping, and maintaining the pool. If  
11 there is no money to keep up the house and yard, the property may decline in value.

12 Accordingly the Court should modify the TRO to permit Farahi to draw  
13 \$5,500 per month against these specific untainted assets to pay for his reasonable  
14 living expenses and \$3,400 per month to maintain the value of his house during the  
15 pendency of these proceedings.

### 16 **III. THE COURT SHOULD RELEASE FUNDS FOR ATTORNEY'S FEES**

17 There is no dispute that the Court has the authority to release frozen funds for  
18 payment of attorney's fees. Indeed, on January 27, 2010, the Court entered an order  
19 per stipulation permitting counsel to draw against the monies on retainer for services  
20 performed through that date.

21 Since the entry of that order, counsel has expended significant resources to  
22 analyze the facts and the allegations of the SEC's complaint, advise the client,  
23 negotiate a bifurcated settlement with the SEC, and assist Farahi in connection with  
24 his ongoing cooperation with the receiver and in compliance with the Court's  
25 orders. Farahi requests that the Court modify the TRO to pay his attorney's fees and  
26 expenses.

27 Courts release funds for fees where the funds are drawn from untainted assets  
28 and the requested fees are reasonable. *FSLIC v. Ferm*, 909 F.2d 372, 375 (9th Cir.

1 1990); *Private Equity Management Group*, 2009 WL 2058247, at \*2-3. Farahi's  
2 request meets those standards.

3 First, the funds for fees may be drawn from untainted assets from Farahi's  
4 personal income tax refund. Farahi received part of his federal tax refund on  
5 November 5, 2009, and on that same day, Farahi wired funds from his Sun West  
6 bank account into the client trust account of the Banafshe Law Firm. (Farahi Decl.  
7 ¶ 4.) Farahi transferred these funds from his personal tax refund to the Banafshe  
8 Law Firm so that he would have funds available to pay for his legal expenses to  
9 defend this action. The Banafshe Law Firm currently holds a balance of  
10 approximately \$112,000 in its client trust account for Farahi. In addition, Bird  
11 Marella holds approximately \$50,000 in its client trust account for Farahi. We have  
12 discussed this matter with the SEC and the SEC does not object to the Banafshe  
13 Law Firm transferring the remaining funds it holds to Bird Marella, and we request  
14 that the Court modify the TRO to permit such transfer.

15 Second, the request seeks the release of funds for fees and expenses actually  
16 billed and reasonably incurred. We request that the Court modify the TRO to permit  
17 Bird Marella to draw against monies held on retainer, including funds from the  
18 Banafshe Law Firm, for fees and expenses accrued from January 27, 2010 (the date  
19 of the prior order releasing assets for fees) to the date of entry of this proposed  
20 order, not to exceed \$112,000. (From January 27, 2010 through March 5, 2010,  
21 Bird Marella's fees and expenses were \$88,000.) We further request that the Court  
22 permit Bird Marella to draw against the retainer to pay Laffer & Gottlieb (forensic  
23 accountants retained by Bird Marella) fees and expenses not to exceed \$5,000.

24 Farahi will require continuing representation in this action as the bifurcated  
25 settlement entered into by Farahi with the SEC does not fully resolve the matter.  
26 The settlement contemplates that there will be a separate remedy phase, including  
27 discovery and motion practice. Bird Marella requests that it be permitted to draw  
28 against monies held in its trust account for its fees and expense and report the timing



1 and amount of the draws to the SEC and the receiver, rather than apply to the Court  
2 to further modify the TRO to release fees.

3 **IV. CONCLUSION**

4 Farahi has sufficient personal assets to pay for his living expenses and  
5 attorney's fees. These assets are not part of the receivership and are separate from  
6 NewPoint investors' money. Farahi has shown good cause that he needs funds to  
7 pay his reasonable living expenses and attorney's fees. He has no other source of  
8 income. Accordingly, the Court should release funds from these assets for Farahi's  
9 reasonable expenses of \$8,900 (\$5,500 for living expenses and \$3,400 to preserve  
10 the house), and to pay attorney's fees and expenses actually billed in an amount not  
11 to exceed \$112,000 and accountant's fees and expenses not to exceed \$5,000.

12  
13 DATED: March 22, 2010

Gary S. Lincenberg  
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17 By: /s/ David I. Hurwitz

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19 Attorneys for Defendant John Farahi  
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